

# **TREATIES FOR LEGAL ASSISTANCE IN CIVIL MATTERS**

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

## ***Applicable legislation in this field***

- Law no. 189/2003 on international legal aid in civil and commercial matters, published in the Official Gazette no. 337/19<sup>th</sup> of May 2003
- Order of the Ministry of Justice no. 2888/C/2003 for the approval of the Methodology of enforcement of the Law no. 189/2003 on international legal aid in civil and commercial matters, published in the Official Gazette no. 717/14<sup>th</sup> of October 2003
- Law no. 105/1992 on the regulation of the relations of private international law, published in the Official Gazette no. 245/1<sup>st</sup> of October 1992
- Convention on the acknowledgment and execution of foreign decisions by arbitration concluded in New York on the 10<sup>th</sup> of June 1958

## ***I. Conventions in civil matters***

Conventions of legal aid in civil matters are those agreements between Romania and other sovereign states, through which measures of procedural and material nature are regulated, in a very broad field, which shall comprise all the rights regarding the individual liberties in the field of economic or professional activities, or in the field of property or family.

## ***II. Mutual legal protection of the foreign citizens' rights and patrimonial interests and free access and in conditions of equality of the foreign citizens to justice***

We shall analyze in the followings the defining elements regarding the legal condition of foreigners, as well as the way in which it suffers amendments through the conclusion of treaties on international legal aid. In fact, in its attempt to protect its own citizens, a state many times regulates the foreigners' legal condition differently to that of their own citizens. Such

an approach, otherwise natural, led to the appearance of conventions of legal aid between sovereign states, through which, in a certain field (in civil matter in this case), the differences of treatments are removed, aiming in this way to the improvement of the relations between the signatory states. At a concrete level, the consequence of existence of such treaties is that a foreign trade company, but not having the nationality of a country to which Romania has concluded a convention of legal aid in civil matters, entering the Romanian market, shall evolve in conditions of full equality with the domestic companies; should it face difficulties, it may resort to the institutions and procedures regarding the mutual legal aid regulated by the incident treaty.

- a) Citizens of a country to which Romania has a treaty of legal aid in civil matters shall enjoy the same legal protection as the one granted by Romania to its own citizens, according to Romanian legislation.
- b) Citizens of one of the contracting parties are entitled to bring actions or to present applications to the competent authorities of the other contracting party under the same conditions as its citizens.
- c) The issue of exemptions in the procedural expenses matter. The conventions concluded by Romania with third party states show that the citizens of a contracting party may request on the territory of the other contracting party the reduction or exemption from expenses of procedure, as well as of the prior payment of the procedure expenses, under the same conditions as its citizens.
- d) Assimilation of legal persons. In general, the treaties provide for equality of treatment in relation natural persons – legal persons, in the sense that the provisions from the conventions of legal aid in civil matters referring to the citizens of one of the contracting states are mentioned, expressly, as executory under the same conditions also to legal persons,
- e) including trade companies established according to the laws of the contracting state on the territory of which they have their headquarters.

### ***III. Transmission of judicial and extrajudicial acts (institutions, regulation, mechanism, content of the application, language, expenses, rogatory commission)***

#### **1. Institutions, regulation and mechanism**

Judicial and extrajudicial acts in civil matters, coming from a contracting state and are destined to the persons which are on the territory of the other contracting state, shall address by the requested authority to the requesting authority through the mediation of the Ministries of justice of the contracting states (or of the similar bodies).

The applicable law in the execution of legal aid application is the law of the state of the requested competent authority. After the performing of the legal aid application, the requested authority shall transmit the acts to the requesting authority; in the event in which the application could not be performed, all the writings shall be returned to the requesting authority, together with the reasons that have prevented the fulfillment of the application.

This procedure does not rule out the possibility for each contracting party to notify, through its diplomatic or consular representatives, judicial and extrajudicial documents destined to its own citizens.

#### **2. Content of the application, language of the acts/the issue of translation, expenses, handing over of the documents**

The legal aid application, without being a standard form, is subject to certain conditions, in the sense in which it is necessary for it to comprise a series of data and mentions, so that the performing of the application to be possible. In general, the application shall comprise references to the requested competent authority, the denomination of the requested competent authority, the indication of the cause in which the granting of legal aid is requested, etc. Also, data regarding the parties (first name and last name, procedural capacity, citizenship, domicile or residence and in the case of the legal persons – including trade companies – its denomination, headquarter and nationality), their representatives – legal or conventional, namely first name, last name, address, the object of the application and data necessary for its fulfillment shall be inserted. Finally, the mention of the acts annexed to the application shall exist also.

Another type of application is that of handing over of acts, in which the address of the recipient and the type of acts that are to be handed over shall be mentioned, and also the official stamp of the requesting competent

authority and also this is valid for the legal aid application and for the annexed documents.

Provided that international agreements do not stipulate otherwise, the application and annexed documents shall be translated in the language of the requested state, as follows:

- a) international legal aid application – by the concern of the Ministry of Justice;
- b) annexed documents – by the concern of Romanian legal authorities and on the expense of the interested parties, except the cases in which the parties are exempted from the payment of the legal expenses;
- c) the form of proving the communication shall have the title and mentions printed in French, English and German, by the concern of the Ministry of Justice.

The expenses occasioned by the granting of legal aid on the territory of a contracting party shall be borne by it; the expenses made with the administration of proofs do not have a differentiated regime, being assimilated. The obligation of communicating to the requesting competent authority the quantum of the expenses made shall be in the burden of the requested competent authority. If the requesting authority shall levy expenses from the person normally liable to pay them, the cashed amounts shall remain in the burden of that contracting party whose authority has levied them.

The acts shall be handed over by the requested competent authority according to the legal provisions in force on the respective date on the territory of its state.

### **3. Rogatory commissions**

International rogatory commission means an act of judicial procedure, through which a judicial authority from a state shall request to the competent authority from the other contracting state to fulfill, on its behalf and in its name a judicial act in a determined case. Regarding the issue of the procedure and the forms of fulfillment of the rogatory commissions, these are determined by the law of the contracting state where they are fulfilled.

The application is transmitted by the requesting competent authority to the requested competent authority through the mediation of the ministries of justice (or institutions with similar duties) of the two states parties to the convention. If the convention does not expressly specify the possibility of

taking, on the way of the rogatory commissions, of insuring, conservatory or of forced execution measures, such activities cannot be performed.

#### ***IV. Effects of foreign judgments and decisions by arbitration***

##### **1. Acknowledgment and execution of foreign judgments**

A foreign judgment shall acquire executory force in Romania, just like a decision of the Romanian state, only if the *exequatur* is obtained (judicial procedure in which, as a result of the control exercised by the courts of one state on a decision pronounced by the courts of an another state and whose enforcement is requested on the territory of the first one, the respective judgment is declared as executory).

Romanian legislation distinguishes between the acknowledgment of a foreign judgment and its enforcement, in the sense in which through the acknowledgment the authority of *res judicata* is practically obtained on the Romanian territory. There are two types of acknowledgment: of full right and through judgment of the Romanian court. Foreign judgments regarding the civil status of citizens of the state where they have been pronounced or if, being pronounced by a third party state, were acknowledged first by the state of citizenship of each party are acknowledged of full right in Romania. In order to obtain the acknowledgment, proofs shall be attached to the application of acknowledgment and approval of the execution filed with the competent Romanian court, from which the fulfillment of the conditions requested by the Romanian law and/or by the conventions of legal aid in civil matters with connection in this case to result, conditions referring in general to the following aspects:

- decisions to be final and liable to execution according to law of the contracting part on the territory of which they have been pronounced;
- the exclusive capacity of an authority from the requested contracting state not to have been violated, through foreign judgments whose acknowledgment is requested;
- it is necessary for the person compelled through the respective decision, if it has not participated in the trial, to have been given all the summons and the acts of notification requested by the law of the contracting party on the territory of which the decision whose acknowledgment is requested, has been pronounced;
- when on the territory of the requested contracting party is pending a process between the same parties, with the same object and for the same deeds, the judgments are not acknowledged;

- the majority of the treaties impose for the requested court to verify if in the moment of the judgment the law applicable to the cause was complied with, according to the regulations from the requesting contracting state;
- the compulsoriness that, through the judgment that is requested to be acknowledged, damages not to be caused to the public order of the contracting party on the territory of which the execution of the judgment is to be acknowledged or approved.

The application of exequatur is addressed to the county tribunal in the circumscription of which the forced execution is to be performed. When the foreign judgment contains solutions on many counts of application, the approval of the execution may be granted separately, obviously if the legal aid treaty does not provide otherwise.

Regarding the *judicial transactions concluded abroad*, these are acknowledged and put into execution in Romania under similar conditions to those governing any other judgment.

## **2. Decisions by arbitration**

Usually, the decisions by arbitration are executed willingly, otherwise they are going to be brought to fulfillment by forced execution, on the territory of the state where the pronouncing has taken place or on the territory of another state, in the last situation it becoming a foreign decision by arbitration. In the field of arbitration, both *territorial competence* and the *applicable law* are determined by parties' consent, on the way of consequence resulting that only when the parties have not established by their own will the applicable law, it cannot be talked about the issue if the competent law has or has not been enforced.

Regarding the exequatur of the decision by arbitration, it is granted in Romania by the law court, just like the exequatur of a judgment, the fulfillment of the same main conditions being verified.

## ***V. Transmittal of the acts of civil status. Provisions regarding the status of the person. Provisions regarding successions***

### **1. Transmittal of the acts of civil status**

The acts of civil status are transmitted through the mediation of the ministries of justice of each contracting party, or of the institutions with similar duties.

Conventions stipulate in general that the competent institutions of each contracting party, transmit, upon request, free of charge, to the

competent institutions of the other contracting party, certificates of civil status, excerpts from the registries of births, deaths and marriages as well as certified copies of the decisions pronounced by the law courts in the field of civil status, if these documents refer to the citizens of the requesting contracting party and are requested for official purposes.

## **2. Provisions regarding the matter of the status of the person and the family law**

*The capacity of the natural person* is established according to the law of the contracting party whose citizen is the person.

*The capacity of the legal person* is established according to the law of the contracting party on the territory of which it has the headquarters.

*The conclusion of marriage* is governed regarding the form by the law of the contracting party on the territory of which it takes place and regarding the fulfillment of the conditions regarding the merits of the marriage, the spouses shall be subject each of them to the law of the citizenship.

Patrimonial and personal relations between the spouses are governed by the law of the contracting party of which they are citizens, and if the spouses' citizenships are different, by the law of the contracting state on the territory of which the common domicile is to be found. The law governing the personal and patrimonial relations is the one that is going to be enforced regarding the determination of the competent institutions and courts.

In the field of **divorce**, the applicable legislation shall be the one of the both spouses' citizenship, in the case of differentiation or both laws. Regarding the applicable legislation to the establishment of the nullity of the marriage, it shall be the law that has governed the conclusion of the marriage.

**Affiliation** shall be governed by the law of the child's citizenship, as a principle, being provided for in the treaties the possibility for the legislation of the domicile to be applied, if it would be more favorable to the best interest of the infant, the same principle being on the basis of the establishing the competent courts.

**Legal relations between parents and children** are established according to the law of the contracting party whose citizen is the child.

The conditions of the merits requested for the **conclusion of the adoption** are those established by the adopter's national legislation and of the adopted person, in case of difference of citizenship the two national regulations being applied cumulatively.

The law of the contracting party on the territory of which the adoption is concluded, governs the **form of the adoption** and the **effects of the adoption** and **the adopter – adopted relations** enter within the incidence of the law of the effects of the marriage.

### **3. Provisions regarding successions**

The equality principle – Conventions expressly establish this principle, according to which the citizens of a contracting party are equal to those of the other contracting party both regarding the capacity to acquire by inheritance or will goods existing of its territory or rights that are to be performed on this territory, and the capacity to draw up, modify or revoke a will regarding such goods or rights.

The applicable legislations – the right to inheritance on certain movables is determined by the law of the contracting party whose citizen was the author of the succession on the date of the death; in the case of the immovable assets the applicable legislation shall be *lex loci*.

The vacant succession – functioning the same criteria, in case of vacant succession the movables will revert to the contracting state whose citizen the deceased was, and the immovable assets will revert to the state on the territory of which they are.

The will – regarding the law applicable to the form of drawing up, modification and revoking, the law of the deceased's citizenship shall apply or the law of the contracting party on the territory of which were made those acts.

The competence – the law applicable to the opening of the succession, successional procedures and litigations in this field shall be determined on the basis of the same distinction above-mentioned, movable/immovable asset, with the mention that certain treaties allow for, in the case in which all the assets of a patrimony left from a citizen of a contracting state is on the territory of the other contracting state, with all the successors' consent, the competence to be incumbent to the authorities of this contracting party.

The rights of the consular and diplomatic missions – if their own citizens are not present, the diplomatic and consular missions have the right granted through the aid convention to represent them without a special power of attorney, beside any authority of the contracting state on the territory of which it operates.